

**CIRCUIT COURT OF THE STATE OF WEST VIRGINIA  
FOR COUNTY OF POCAHONTAS**

<b>STATE OF WEST VIRGINIA</b>	)	<b>CASE NO.: 07-P-CR-09</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE ROWE</b>
	)	
v.	)	<b>DEFENDANT'S MEMORANDUM</b>
	)	<b>IN SUPPORT OF MOTION FOR</b>
<b>CHARLOTTE ELZA,</b>	)	<b>RECONSIDERATION</b>
	)	
<b>Defendant.</b>	)	
<hr/>		

Now comes the Defendant, Charlotte Elza, by counsel, John A. Proctor pursuant to the previously filed Motion for Reconsideration. In support of said Motion, the Defendant hereby provides this Memorandum in Support of Motion for Reconsideration.

**Factual and Procedural Background**

On or about January 21, 2004, a criminal complaint was filed in the circuit Court of Pocahontas County by Rhonda Taylor alleging numerous sheep had been killed over several months by two dogs owned by the Defendant. This case was dismissed on August 27, 2004, and reinstated by Misdemeanor Information on August 30, 2004 by Tony Tatano, Assistant Prosecuting Attorney.

Previous counsel, Joan Mooney, filed a Motion to Dismiss on January 28, 2005, setting forth *prima facie* reasons, as a matter of law, as to why this matter was defective, in violation of due process and equal protection of the laws and this matter should be dismissed accordingly, but the Court failed to rule. The matter proceeded to trial on July 20, 2006 in which numerous irregularities took place during the proceedings. The jury returned a guilty verdict. A sentencing hearing was held on August 29, 2006.

Defendant's counsel filed a Motion for a New Trial and Change of Venue on September 18, 2006. This Motion was not ruled on by the Magistrate Court until mid-October. At this time, Defendant was notified by counsel that she would no longer be able to represent Defendant to due personal and professional issues and that she would need to hire new counsel but prior to her withdrawal, counsel would file a Motion for Reconsideration or Reduction of Sentence. The Motion for Reconsideration or Reduction of Sentence was filed on October 25, 2006.

Prior to the filing of this Motion, on October 21, 2006, new counsel was retained by the Defendant. On or about November 8, 2006, Defendant filed a Notice of Intent to Appeal and Petition for Appeal or in the Alternative New Trial which clearly explained the cause for the delay in filing within the original 20 day period prescribed by WVRCPMC 20.1. At that time, the Magistrate refused to send the file up to the Circuit Clerk for filing until such time as she could hold a hearing on the matter. This hearing was finally held on December 20, 2006. At the conclusion of the hearing, the Magistrate ruled that she did not have any jurisdiction to decide the Defendant's Motion and that this would have to be heard in the Circuit Court. Even after this, the Magistrate still did not send the Petition for Appeal to the Circuit Court Clerk for appropriate docketing.

On January 8, 2007, Defendant filed a Motion for Good Cause with this Court. The matter was heard on February 2, 2007. On May 24, 2007 and Order denying the Motion for Good Cause was entered with the Pocahontas County Clerk's Office. On June 5, 2007, this Motion was filed. The matter was heard on September 25, 2007 at which time the Court requested this Memorandum.



## ARGUMENT

The arguments previously made with regard to the procedural history necessary to qualify this matter for consideration under WVRCPMC 20.1 and 21 have been made a matter of record before this honorable Court in the previous motions and hearings. Thus, in an effort not to belabor the point, I will only add that Defendant's previous counsel filed a Motion for New Trial and Change of Venue within 20 days of the sentencing instead of within 20 days of the verdict. This was a mistake that was made due to Counsel's inexperience and not due to lack of diligence. Furthermore, the Court is well within its discretion to grant the Appeal as it was filed within the 90 day period and good cause has been shown when all facts and circumstances as recounted at earlier hearings are taken into consideration.

As to the issue of the incomprehensible nature and poor quality of the tapes that constitute the record of the Magistrate Court trial in this matter, the West Virginia Supreme Court of Appeals ("Supreme Court") has made it clear through a series of rulings that: a. Magistrate Courts are now courts of limited record for jury trials; b. jury trials in Magistrate Court must be recorded; and, c. where the recording of a criminal jury trial is so seriously flawed that appellate review on the record is not possible, the Circuit Court must remand case to Magistrate Court for a new jury trial.

[I]n 1994, the legislature amended certain provisions of the West Virginia Code pertaining to magistrate courts. West Virginia Code §50-5-8 was rewritten as part of those amendments. The new version of W.Va. Code §50-5-8 became effective on June 10, 1994. . . Under the new provisions, jury trials in magistrate courts must be electronically recorded, and such recordings must be securely preserved by the magistrate

court clerk. W.Va. Code §50-5-8(e) (1994) (Supp.1996). In addition, the legislature designated, pursuant to its constitutionally granted power, that “[f]or purposes of appeal, when a jury trial is had in magistrate court, the magistrate court shall be a court of limited record.” *Martin v. W.Va. Div. of Labor Contractor Licensing Bd.*, 199 W.Va. 613, 486 S.E.2d 782 (1997)

In *State v. Bergstrom*, 196 W.Va. 656, 474 S.E.2d 586 (1996) the Supreme Court examined the change in the West Virginia Code pertaining to Magistrate Courts, stating: “For purposes of appeal, when a jury trial is had in magistrate court, the magistrate court shall be a court of limited record. Trials before a magistrate when a jury is empanelled shall be recorded electronically. Section 50-5-13(b) (Supp.1995), as amended provides: In the case of an appeal of a criminal proceeding tried before a jury, the hearing on the appeal before the circuit court shall be a hearing on the record.”

Finally, in *State v. Chanze*, 211 W.Va. 27, 565 S.E.2d 379 (2002), at Syl. Pt. 2, the Supreme Court states; “When an electronic record of a magistrate court jury trial in a criminal case is so defective that no record or virtually no record is available from which to prepare an appeal or to conduct appellate review, the criminal defendant is entitled to obtain meaningful review of the magistrate court proceedings by informing the circuit court of the faulty record and reconstructing the record or, if reconstruction is impossible, receiving a new trial by jury in magistrate court.”

Wherefore, due to the concomitant factors of inexperienced, ineffectual counsel, a chaotic courtroom, the refusal of the magistrate to instruct the jury as to the basic statutory law applicable to the matter and questionable actions on the part of the former assistant prosecutor who tried the matter with regard to his relationship to the magistrate

judge, and the lack of a comprehensible record, the Defendant respectfully requests this Honorable Court grant her Motion for Reconsideration and likewise her Motion for New Trial at the Magistrate Court level.

**DATED:** 11/14/07

**UNDERWOOD & PROCTOR**

By: 

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ADMITTED TO PRACTICE  
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AMY J. CONLEY, Paralegal

August 5, 2008

## Via U.S. Mail & Facsimile

Charlotte Elza  
Rt. 1, Box 59-B  
Green Bank, WV 24944

Re: Elza, Charlotte: State of WV v., 2006-2260

Dear Charlotte:

I have reviewed your fax with the Motion to Set Aside Verdict & Vacate All Judgments Based on New Evidence. I am not sure why you cannot understand the fact that I cannot file the motion because it is remarkably similar to the one we discussed twice in the past two weeks. In those conversations I explained to you that the Rules of Professional Conduct precluded me from filing Motions that I knew could not be addressed by the Court. In this case, every one of the arguments you raise has been brought before Judge Rowe and he has chosen not to even examine them to determine whether they have any merit.

As I have repeatedly explained to you, the Judge's ruling is quite simple and straightforward. He had two options when this matter was finally sent up from the Magistrate Court. He could accept the Appeal and review the matter in its entirety or he could take the other option open to him (fair or not). He chose to take the second option and that was to rule that Ms. Mooney had 30 days to file a Notice of Appeal and unless we could show good cause why that appeal was not filed, dismiss the matter. He ruled that (even in light of all the evidence we proffered as to why the appeal was not filed by Ms. Mooney) that we did not show good cause. Therefore, he was ruling that the appeal should have been filed within the 30 day timeframe and wasn't and he dismissed the matter.

We then took the matter back before him on a Motion to Reconsider his first ruling and he made the same ruling that the Appeal should have been brought before him within 30 days. It was not and therefore, irregardless of the perfectly valid reasons we presented him, he refused to hear the matter.

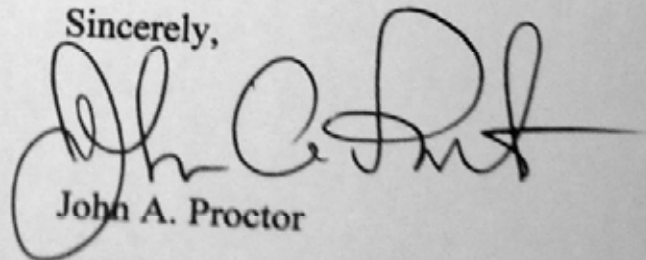
Elza Letter, Page 2  
August 5, 2008

Thus, even if we had not previously proffered the same arguments you raise in your Motion (please review our original Petition for Appeal and Rule to Show Cause) we are outside the 12 months prescribed for West Virginia Rule of Civil Procedure 60(b) (Attached). Rule 60(b) is the rule we would be bringing this under and since the Judge is refusing to even address anything outside of the 30 day window for an appeal, he certainly isn't going to address constitutional or fraud arguments.

At this point, I reiterate, the only vehicle we have to avoid the imposition of your sentence is to file a Petition for Appeal to the West Virginia Supreme Court. If you are willing to do that, I have offered to do this for a reduced fee of \$7500.00. If we inform the Court that we are filing and Appeal, then the hearing set for next Wednesday, August 12, 2008 should be continued. I need to file that motion for another continuance by no later than Thursday morning and will do so if you agree to hire me. If you insist on filing the Motion you faxed me, I can no longer represent you and will file a Motion to Withdraw as your counsel and will ask that the Court grant you a continuance to allow you time to find alternative counsel. I still think that your best decision economically would be to simply take the judgment and move on with your life. As I have said many times, even if we appeal, the case would just be sent back to Magistrate for a new trial which will require more money to defend.

I am faxing this to you and will call you to discuss it one more time this afternoon so we can decide our individual courses of action. Once again, I am truly sorry for the injustice that has been taken against you but the only avenue of redress remaining is the Supreme Court. We have until October to file that Petition and need to take action soon. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Proctor", written in a cursive style.

John A. Proctor

IN THE MAGISTRATE COURT OF POCAHONTAS COUNTY  
AT MARLINTON, WEST VIRGINIA

TONY TATANO,

Plaintiff,

v. CASE NUMBER: 04-M-545

DEFENDANT: MOTION TO  
SET ASIDE VERDICT and  
VACATE ALL JUDGMENTS BASED  
UPON NEW EVIDENCE

CHARLOTTE ELZA,

Defendant.

---

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW the Defendant, through Counsel, on a timely basis, filing this Motion to Set Aside Verdict and Vacate All Judgments Based upon New Evidence not previously known prior to trial, or prior to the filing of *post-trial* motions, that may require a new trial, for the reasons set forth herein, pursuant to the West Virginia Rules of Criminal Procedure for Magistrate Courts, and the respective sections of the West Virginia Code of 1931, as amended, and for the record says as follows:

**SUMMARY BACKGROUND OF SPECIFIC VIOLATIONS  
EFFECTING DUE PROCESS AND EQUAL PROTECTION OF THE LAWS**

1. This instant matter began on or about 27 August 2004 via a 'Misdemeanor Information' alleging a violation of W. Va. Code §19-20-17 filed by Anthony "Tony" Tatano, former assistant prosecuting attorney, Pocahontas County, West Virginia, following the Circuit Court's dismissal on the very same day of a similar action filed Mr. Tatano, Case Number: 04-M-76, alleging a violation of W. Va. Code §19-20-18, over an alleged incident occurring on or about 18 January 2004, filed as a criminal complaint dated 2 February 2004 in the Magistrate Court.



2. On or about 2 February 2004, Rhonda Taylor filed a criminal complaint alleging a violation of W. Va. Code §19-20-18, alleging eight (8) sheep owned by her and her husband had been killed over a ten (10) month period of time, accusing two dogs, one a mixed-breed being approximately two-years old at the time and a Boxer of approximately eight-months old at the time, being cared for by the Defendant on behalf of her daughter. The matter, Case Number: 04-M-76, was dismissed in Circuit Court on 27 August 2004 for lack of evidence, lack of due process and equal protection of the laws, but on the very same day was reinstated under the current 'Misdemeanor Information', under W. Va. Code §19-20-17, signed by Mr. Tatano, himself, and attached to a Summons dated 30 August 2004 from the Magistrate Court.

3. On or about 21 January 2004, with permission and order of the County Sheriff, in a meeting of the County Commission, the Defendant was told to return the mixed-breed dog to her daughter, who had come in from out-of-state and forthwith took possession of her dog. As for the young Boxer, direct testimony in Case Number 04-M-76 by Jeff Taylor, husband of Rhonda Taylor, was presented in which he claimed to have shot and killed the young Boxer, producing two photos of a dead dog lying on the ground. In the absence of a visible collar bearing her name, the testimony of Jeff Taylor was disputed in the hearing by Defendant as not being the dog in her care.

4. Jeff Taylor further claimed in direct testimony that he had buried the young Boxer, that he claimed to have shot, on his parent's property, situate approximately six or so miles from his own property that is adjacent to the that of the Defendant. In the course of events, at least three formal requests were made by the Defendant to have the alleged dead dog exhumed to recover the collar and dog tags which were not produced in court, nor admitted to having been seen by Sandy Mallow, County Humane Officer, also a witness in Case No. 04-M-76, who claimed she had been called by the Taylors to come inspect the dead dog, but was instead was only shown the same two photos produced in Magistrate Court.

**a. No Investigative Report ever provided**

5. Prior to the arraignment of Defendant in this matter, at neither the first nor second time of her charging, the Court record is silent in that no investigation ever took place, nor has any investigative report ever been provided, as required by law, by the County Sheriff, the State Police, or the County Prosecutor into the allegations made by Rhonda Taylor regarding the original alleged incident occurring on or about 18 January 2004 as filed on 2 February 2004. The absence of these reports constitutes hearsay and is a denial of due process and equal protection of the laws with respect to affirming any charges or judgments against the Defendant.

**b. Chaotic Trial Atmosphere in Courtroom**

6. However, from other assorted Sheriff and State Police reports and respective statements on file, and on record, there apparently has been an 'ongoing feud' between the Defendant, and members of her family, with her neighbors, Jeff and Rhonda Taylor, who live almost a mile from the Defendant, and their relatives who live in the same general vicinity. The 'ongoing feud' has always been over alleged incidents occurring to the small flock of sheep owned by the Taylors. This feuding and hard-feelings appears to have continued into the courtroom by respective members of both opposing families pursuant to the affidavits stemming from the chaotic trial atmosphere of 20 July 2006. See **Affidavits of Witnesses and Observers** in the courtroom on the day of the trial. Trial Audio tapes purchased by Defendant were completely inaudible for transcription, and pursuant to instructions of Defendant's attorney, were given to the Clerk of Circuit Court, along with the original **Affidavits of Witnesses and Observers**, for the review of Judge Rowe of the Circuit Court.

**c. Failure to comply with W.Va. Code §19-20-14**

7. Whether one sheep was allegedly killed, or whether multiple sheep were killed over a ten (10) month period of time, as alleged, the state has failed to produce a single investigative report ever filed at any time with the County Commission as required by W.Va. Code §19-20-14, for each

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and every alleged dead sheep incident. As claimed in the complaint, at least eight (8) sheep were killed, over a ten (10) month time period, thus eight (8) reports should be on file – but not one single report exists. The absence of these required investigative reports proving culpability constitutes a question of hearsay and denial of due process and equal protection of the laws with respect to affirming any charges or judgments against the Defendant.

**d. Failure to comply with W.Va. Code §19-20-15**

8. Additionally, the state has failed to produce a single report filed at any time whereby either a Magistrate or a Notary Public has summoned three substantial, upright and worthy bona fide residents, citizens and taxpayers of the county to go upon the grounds of the complainant and investigate fully the extent of the destruction, loss or injury, on a timely basis as required by **W.Va. Code §19-20-15**, for each alleged dead shecp incident. Pursuant to the complaint, at least eight (8) investigative committees should have been formed, one for each incident – but not one committee was ever formed or filed a proper report as required. The absence of these reports constitutes hearsay and is a denial of due process and equal protection of the laws with respect to affirming any charges or judgments against the Defendant.

9. Further, the state failed to produce a single document in the possession of the clerk of the county commission charged with preserving all papers in connection to any claims in this matter pursuant to the appraisers summoned to go upon the grounds of the complainant and investigate fully any claims filed for any reasons in this particular matter, for each alleged incident, as required by **W.Va. Code §19-20-15**, the absence of which constitutes hearsay and is a denial of due process and equal protection with respect to affirming any charges or judgments against the Defendant.

**e. Two Key Defense Witnesses denied Opportunity to Testify**

10. During the trial held on 20 July 2006, two key witnesses for the defense were specifically



not called and were excused pursuant to a ruling of the Magistrate Court that no matters pertaining to any claims for restitution would be heard; but then matters pertaining to restitution were introduced by the state at a sentencing hearing on 1 August 2006, and again on 29 August 2006, that denied the due process and equal protection of the laws in this case as pertaining to the Defendant's Constitutional Right, Sixth Amendment of Bill of Rights, to call her key witnesses at trial – they were denied a chance to testify.

**f. Total Amount claimed exceeds Magistrate Court limitation**

11. As pertaining to matters and claims for restitution, the amounts finally determined for the eight (8) sheep allegedly killed over an alleged ten (10) month period of time went far above and beyond, and more than doubled, the estimated value placed upon the whole flock of thirty-four (34) sheep as evidenced on the records of the office of the county assessor, in addition to including fencing and alleged medications, amounting to hearsay outside of direct and cross-examination testimony, and contrary to the due process and equal protection of the laws pursuant W.Va. Codes §19-20-14 and §19-20-15, respectively. The total amount claimed for restitution exceeds the \$5000.00 (five-thousand-dollar) limitation of this Court. This case should be heard *De Novo* by the Circuit Court.

**g. Magistrate failed to provide Jury a reading of the law as requested**

12. During the course of the trial of 20 July 2006 the defense was denied the opportunity to introduce a reading to the jury of pertinent sections of the West Virginia Code applicable to this case, and the Magistrate further denied either a reading by the Magistrate, or the Magistrate's interpretation of those pertinent sections for the benefit of the jury, as enumerated herein; again denying the due process and equal protection of the laws in this case as pertaining to the Defendant and her Constitutional Right, Sixth Amendment of Bill of Rights, to put on proper defenses.

## NEW EVIDENCE DISCOVERED POST-TRIAL VERDICT and JUDGMENT

13. Prior to the commencement of the trial, during jury selection and *voir dire*, a juror, David Taylor, falsely answered that he was not related to any of the parties to the action, when in fact after the trial it was learned that he was directly related to Jeff and Rhonda Taylor. This denied Defendant of her Constitutional Right, Sixth Amendment of Bill of Rights, to having an impartial jury.

14. During the course of this instant case, and pursuant to the previous Case No. 04-M-76, it was believed, via direct testimony, that the young Boxer dog of less than one-year-old, had been shot and killed by Jeff Taylor, and confirmed by Sandy Mallow, who claims to have been shown two photos of a dead dog shown to her by the Taylors.

15. However, as seen in the attached "*Second Elza Affidavit*", the daughter of Jeff and Rhonda Taylor, i.e., Courtney Taylor, actually sold the young Boxer dog to Elizabeth Everett who resided at the time in Slaty Fork; she in turn gave the young Boxer to David Moore of Marlinton in exchange for a debt, and Mr. Moore and the young Boxer have since moved to Nicholas County, near Summersville. Defendant visited Mr. Moore approximately a half-dozen times when he lived in Marlinton, saw, and was greeted by the dog each time, and subsequently learned of these corresponding details. See attached *Second Affidavit of Charlotte Elza*.

16. The convoluted role played by Anthony "Tony" Tatano, former assistant county prosecutor, in the filing of this instant action without the required investigative reports, on the very same day the Circuit Court dismissed his previous filing over the same incident for lack of evidence, and denial of due process and equal protection of the laws, including the Order to destroy the two dogs, dated 16 January 2004, from the County Humane Officer, as being improper, not notarized, and not in compliance with pertinent sections of the W. Va. Code, which must be implemented prior to a destruction order, as enumerated herein pertaining to reports required to be filed for each incident.

NEW EVIDENCE DISCOVERED POST-TRIAL VERDICT and JUDGMENT

13. Prior to the commencement of the trial, during jury selection and *voir dire*, a juror, David Taylor, falsely answered that he was not related to any of the parties to the action, when in fact after the trial it was learned that he was directly related to Jeff and Rhonda Taylor. This denied Defendant of her Constitutional Right, Sixth Amendment of Bill of Rights, to having an impartial jury.

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15. However, as seen in the attached "*Second Elza Affidavit*", the daughter of Jeff and Rhonda Taylor, i.e., Courtney Taylor, actually sold the young Boxer dog to Elizabeth Everett who resided at the time in Slaty Fork; she in turn gave the young Boxer to David Moore of Marlinton in exchange for a debt, and Mr. Moore and the young Boxer have since moved to Nicholas County, near Summersville. Defendant visited Mr. Moore approximately a half-dozen times when he lived in Marlinton, saw, and was greeted by the dog each time, and subsequently learned of these corresponding details. See attached *Second Affidavit of Charlotte Elza*.

16. The convoluted role played by Anthony "Tony" Tatano, former assistant county prosecutor, in the filing of this instant action without the required investigative reports, on the very same day the Circuit Court dismissed his previous filing over the same incident for lack of evidence, and denial of due process and equal protection of the laws, including the Order to destroy the two dogs, dated 16 January 2004, from the County Humane Officer, as being improper, not notarized, and not in compliance with pertinent sections of the W. Va. Code, which must be implemented prior to a destruction order, as enumerated herein pertaining to reports required to be filed for each incident.



Additionally during the alleged trial of 20 July 2006 of this matter, Mr. Tatano assisted the chaotic courtroom turmoil as alleged in the various **Affidavits of Witnesses and Observers**; as well as the fact that the Trial Audio Tapes provided to the Defendant are grossly inaudible – is all the more egregious when taking into account that “Tony” Tatano lost his license to practice law in the State of West Virginia, yet continued to participate in certain aspects of this matter during his suspension period; and that now a Special Prosecutor has been appointed to investigate all matters concerning Mr. Tatano’s allegedly sundry activities in a still open investigation, including his recent arrest.

### CONCLUSION

17. In addition to the numerous violations enumerated herein, and as a matter of record, that denied due process and equal protection of the laws pertaining to the elements of the complaint not investigated by any law enforcement agency, as required; plus the fact that David Taylor, as a direct relative of complainants Jeff and Rhonda Taylor, served on the Trial Jury after denying any relationship during *voir dire* to the contrary; the fact that two key witnesses were specifically denied by the Magistrate a chance to provide important testimony at trial; the fact that the trial setting became a chaotic courtroom and the fact that the Audio Tapes of the Trial are completely inaudible for purposes of appeal; the fact that the young Boxer dog was not shot and killed or buried on the property of the parents of Jeff Taylor as testified in open court, but instead is still alive and well, and warranting all allegations in the complaint as hearsay; and the fact that Anthony “Tony” Tatano was indeed not an attorney-at-law licensed to practice as an assistant county prosecutor, yet continued to do so for a specific period of time pertaining to matters in this case – are all new evidence discovered after the verdict and judgment was issued in this matter, and were discovered after the various *post-trial* motions were filed in both this Court and the Circuit Court on behalf of the Defendant. Taken in the cumulative, this case has become convoluted, tainted with bizarre irregularities, replete with multiple denials of due process and equal protection of the laws, and as a whole and in part, warrants a new trial

accordingly to prevent any further injury to Defendant's civil rights.

18. The travesty of justice shamefully displayed in this instant matter is the very reason that all criminal complaints are supposed to be fully investigated prior to the arraignment of any person being accused of a crime. Yet the record is silent in that no investigate report was prepared by the Office of the County Sheriff, nor the State Police, nor the Office of the County Prosecutor. And just as egregious, no investigative committee was ever sworn in by any Magistrate or Notary Public, and no investigative report was ever filed with the Office of the County Clerk or the County Commission relating to any of the alleged eight (8) incidents over the alleged ten (10) month period of time as claimed in the complaint. This case therefore appears to have been manufactured on hearsay, not facts.

**WHEREFORE**, for the reasons set forth herein, the Defendant respectively requests that the verdict be set aside, all judgments vacated; that a full investigation of these matters be initiated; that a new trial be ordered pursuant to the outcome of a full investigation; that a change of venue be considered and ordered outside of Pocahontas County if a new trial is warranted; and that this Honorable Court grant such other and further relief, equitable and otherwise, as this case and social justice may require.

DATED: \_\_\_\_\_

**UNDERWOOD & PROCTOR**

By: \_\_\_\_\_  
John A. Proctor, WVSB #7778  
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**MAGISTRATE COURT OF THE STATE OF WEST VIRGINIA  
FOR COUNTY OF POCAHONTAS**

**STATE OF WEST VIRGINIA**

**Plaintiff,**

**v.**

**CHARLOTTE ELZA,**

**Defendant.**

) **MAGISTRATE NO.: 04-M-545**

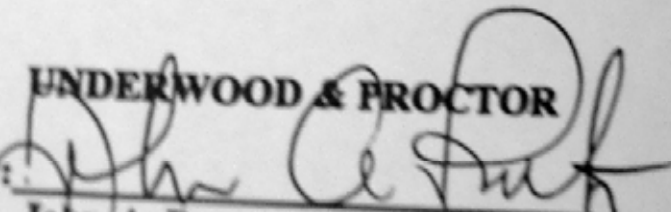
) **NOTICE OF INTENT TO APPEAL**

Notice is hereby given that the Defendant, Charlotte Elza, (Appellant for appeal purposes pursuant to Rule 20.1 of the West Virginia Rules of Criminal Procedure for Magistrate Courts), hereby appeals to the Circuit Court of Pocahontas County to grant Defendant's Petition for Appeal or in the Alternative New Trial with regard to the underlying ruling of the Pocahontas County Magistrate Court's ruling in the above referenced matter.

WHEREFORE, the Defendant prays that the Court grant her request and any further relief that this Court may deem fit and proper.

**DATED: November 8, 2006**

**UNDERWOOD & PROCTOR**

By:   
**John A. Proctor, WWSB #7778**

**Counsel for Defendant**

**CHARLOTTE ELZA**

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**MAGISTRATE COURT OF THE STATE OF WEST VIRGINIA  
FOR THE COUNTY OF POCAHONTAS**

**STATE OF WEST VIRGINIA,**

**Plaintiff,**

v.

**CHARLOTTE ELZA,**

**Defendant.**

) **MAGISTRATE NO.: 05-M-545**

) **DEFENDANT'S PETITION FOR APPEAL**  
) **OR IN THE ALTERNATIVE NEW TRIAL**

Now comes your Petitioner, Charlotte Elza, by counsel, John A. Proctor, pursuant to Rule 20.1 of the West Virginia Rules of Criminal Procedure for Magistrate Courts (hereinafter "WVRCPMC") and Petitions this honorable Court for an Appeal of her verdict in 04-M-545 for the following reasons:

1. This Court is the Appellate Court for verdicts arising from Magistrate Court trials under the applicable rules of the WVRCPMC;
2. On or about January 21, 2004, a criminal complaint was filed in the Circuit Court of Pocahontas County by Rhonda Taylor alleging numerous sheep had been killed over several months by two dogs owned by the defendant. This case was dismissed on August 27, 2004 and reinstated by Misdemeanor Information on August 30, 2004 by Tony Tatano, Assistant Prosecuting Attorney.
3. The trial in the Magistrate Court contained numerous errors including but not limited to: the Prosecution failed to meet its burden of proof; the Court refused to allow the Defense to put witnesses on the stand; the Court failed to instruct the jury as to the burden of proof or even the elements of the crime; and, the

Court failed during its voir dire to determine that one of the jurors was a first cousin of the alleged victims.

4. The Prosecuting Attorney, the Sheriff, or the State Police did not provide any documentation as to whether an investigation of the incident took place and in fact have testified that none of them did any investigation into the matter.
5. The State has failed to produce a report at any time whereby either a magistrate or a county commissioner has summoned three substantial, upright and worthy bona fide residences, citizen and taxpayers of the county to go upon the grounds and investigate fully the extend of the destruction, loss or injury, on a timely basis pursuant to W.V. Code Section 19-20-15 for each alleged incident.
6. Whether one sheep was allegedly killed or multiple sheep were killed, the State has failed to produce an investigative report ever filed with the County Commission pursuant to W.V. Code Section 19-20-14 for each and every alleged incident.
7. The State has also failed to produce documentation in the possession of the Clerk of the County Commission who is charged with preserving all papers in connection to any claims in this matter, pursuant to the appraisers summoned to go upon the grounds and investigate fully any claims filed for any reasons in the particular matter, for each alleged incident, pursuant to W.V. Code Section 19-20-15.
8. Regarding restitution, the amount that was finally determined for the sheep allegedly killed exceeded the estimated value placed on the whole flock of

sheep as recorded on the individual personal property and real estate report in the County Assessor's office. See a copy of the Individual Personal Property and Assessment Report filed for the years 2002, 2003, 2004 by the Taylor's in the Sheriff's office and or the office of the Clerk of the County Commission of Pocahontas County.

9. A jury trial was held on July 20, 2006 and the copies of the tapes are of such poor quality, have numerous blank spots and are garbled by the general commotion present in the courtroom during the hearing they thereby either omit or have destroyed pertinent information thus denying this Court and the defendant the ability to prosecute an appeal on the record.
10. Defendant has a Motion for Reconsideration or Reduction of Sentence pending before the Magistrate Court therefore the 20 day time period delineated under WVRCPMC 20.1 has not expired.
11. Furthermore, due to personal and professional issues beyond her control, Defendant's prior counsel has informed the defendant after filing the Motion for Reconsideration or Reduction of Sentence that she would no longer be able to represent the Defendant in mid-October, 2006. Defendant was finally able to retain current counsel, John A. Proctor, on October 21, 2006. Mr. Proctor requested the defendant's file from her previous attorney on October 23, 2006. Previous counsel mailed the file on October 24, 2006 but due to an unexplained problem at the U.S. Post Office the file was returned to the previous attorney on November 2. She then sent the file by Federal Express on November 3 and counsel did not receive said file until November 6, 2006.



**WHEREFORE, for the reasons set forth herein, the defendant respectfully requests that all judgments be set aside, that an appeal be granted or in the alternative a new trial be ordered, and such other relief as this Court deems fair and just.**

**DATED: November 8, 2006**

**UNDERWOOD & PROCTOR**

**By:**

**John A. Proctor, WVSB #7778**

**Counsel for Defendant**

**923 Third Avenue**

**Huntington, WV 25701**

**Telephone: (304) 522-0508**

**Facsimile: (304) 399-5449**

Fiduciary Commissioner for  
Pocahontas County, West Virginia  
10/19/2c

**ORDER OF PUBLICATION  
IN THE FAMILY COURT OF  
POCAHONTAS COUNTY, WEST  
VIRGINIA**

Civil Action No. 06-D-86  
**IN RE: THE MARRIAGE OF:  
ELIZABETH EVERETT,  
PETITIONER and  
JAMIE HUBBERT,  
RESPONDENT**

**THE OBJECT OF THIS SUIT  
IS TO OBTAIN A DIVORCE.**

To the Above Named Respon-  
dent(s): **JAMIE HUBBERT**

It appearing by affidavit filed in  
this action that Jamie Hubbert is with  
an unknown residency of the State of  
West Virginia, it is hereby ordered that  
Jamie Hubbert serve upon the Peti-  
tioner's Attorney, Tony Tatano, whose  
address is 900 Tenth Avenue, Marlin-  
ton, WV 24954, an Answer, including  
any related counterclaim or defense  
you may have to the petition for Order  
for Paternity Testing filed in this ac-  
tion on or before November 24, 2006.  
If you fail to do so, thereafter judg-  
ment, upon proper hearing and trial,  
may be taken against you for the relief  
demanded in the Petition.

A copy of said Petition can be ob-  
tained from the undersigned Clerk at  
his office.

Entered by the Clerk of said Court  
October 23, 2006.

Earl D. Michael,  
Circuit Clerk of Pocahontas County  
By: Carrie E. Wilfong, Deputy  
10/26/06

**NOTICE OF ADMINISTRATION,  
PENDING OR  
UNADMINISTERED**

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author

November 26, 2006  
Rt.1 Box 59  
Green Bank, WV 24944

Underwood Law Office  
923 - 3<sup>rd</sup> Ave.  
Huntington, WV 25701

Dear Amy,

I'm enclosing an article in our local newspaper which I feel Mr. Proctor should be aware of and how it could affect my case.

Jamie Hubbert was the first person to tell me the boxer was never killed by the Taylor's as they stated in court. He also, would tell me where I could find the dog, I never believe him.

Elizabeth Everett was the person that got the boxer from Rhonda Taylor at Snowshoe in January, 2004. She was supposedly to take the dog back to Tennessee and never bring the dog back to this area.

Now, Tony Tatano is representing her in a (free) divorce case. Jamie Hubbert is living in Florida.

If Mrs Mooney sent you all, my complete case, you can see; that I have tried to get, through court orders, the body of the dog or to see the bodies of the sheep with (no help from the Court, Magistrate, Judge, Sheriff or Humane Officer) in three years. I have ask the Court to investigate how my daughter's dog can be running around in Marlinton, four blocks from the Courthouse and I'm still in court. They tell me that the Boxer has nothing to do with this case. I hope you all know how corrupt this case is getting to be. Mrs Elizabeth Hubbert will never tell the truth in court now. I am sure that the Prosecuting Attorney know the truth about the boxer and ceased the moment. This divorce case was a very dishonest but smart move on their part.

Sincerely yours,

*Charlotte Elza*



2110

CHARLOTTE W. ELZA 9-07  
P.O. BOX 989 PH, 304-856-4894  
GREEN BANK, WV 24844

Date Oct. 20, 2006

PAY to the order of Joe Underwood Tax Office \$ 3000.00  
Three thousand Dollars



FIRST CLUB

FIRST CITIZENS BANK  
www.firstcitizens.com

Charlotte W. Elza

For Legal Fee John Pruitt

⑆0518036741⑆000002743457⑆02110

WGS

# RECEIPT

DATE 10-23-2004 No. 160157

RECEIVED FROM Charlotte W, Elza \$3000.00

Three thousand dollars DOLLARS

FOR RENT refrainer

FROM Charlotte Elza WLO

BY Cynthia

ACCOUNT	<u>6000 00</u>	<input type="radio"/> CASH
PAYMENT	<u>3000 00</u>	<input checked="" type="radio"/> CHECK
BAL. DUE	<u>3000 00</u>	<input type="radio"/> MONEY ORDER

**§19-20-15. Same -- Assessment of damages; appraisers.**

Authority is hereby given to magistrates and notaries public within this state, and within their respective jurisdictions, to summon three substantial, upright and worthy bona fide residents, citizens and taxpayers of his county to assess the damages suffered by any person on account of the destruction, loss or injury of any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry by dogs within the county. The appraisers shall be appointed upon the request of a person suffering damages on account of such destruction, loss or injury. The appraisers shall go upon the ground and investigate fully the extent of the destruction, loss or injury, taking all the evidence deemed necessary to arrive at the facts to be passed upon in arriving at the amount of damage, if any, suffered by the party making the complaint. Before the appraisers may be summoned by the magistrate or notary public, the complainant shall be required to make a sworn complaint before the magistrate or notary public, setting out in plain, easily comprehensible terms the facts concerning his damages to the best of his knowledge. After making a full investigation of the facts involved, the appraisers, with the assistance of the magistrate or notary public, shall make a sworn statement and report the facts ascertained and the damages suffered. The report and statement shall be filed with the county commission or the clerk thereof in vacation. The fees and mileage for services allowed in such cases shall be the same as are allowed magistrates, witnesses and arbitrators in magistrates' courts in this state for similar services. In the event that the appraisers find that the complainant has suffered no damage, then the complainant shall be responsible for and pay all the costs and expenses of the proceeding. In the event that the complainant has suffered damages on account of the destruction, loss or injury of his domestic animals, according to the finding of the appraisers, the owner, keeper or person permitting the dog, or dogs, causing the damage to remain upon the premises under his control shall be liable for all damages sustained by the complainant, including all costs and necessary expenses. All of the damages shall be collectible by an action at law before any court or magistrate having jurisdiction of the matter. All papers in connection with any claim shall be filed and preserved in the office of the



*Rhoda used claw for digging in flowers, today sheep's neck in April-May 1994*  
*County Commission payed for sheep 2 months straight*  
*Old wooden handle uneven claws hammered together.*

**§19-20-18. Same -- Duty of owner to kill dog; proceeding before magistrate on failure of owner to kill.**

The owner or keeper of a dog that has been worrying, wounding, chasing or killing any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry not the property of the owner or keeper, out of his enclosure, shall, within forty-eight hours, after having received notice thereof in writing from a reliable and trustworthy source, under oath, kill the dog or direct that the dog be killed. If the owner or keeper refuses to kill the dog as hereinbefore provided, the magistrate, upon information, shall summon the owner or keeper of the dog, and, after receiving satisfactory proof that this dog did the mischief, shall issue a warrant on application being made by the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, or colts or poultry killed; and give it into the hands of the sheriff, who shall kill the dog forthwith or dispose of by other available methods. The cost of the proceedings shall be paid by the owner or keeper of the dog so killed, including a fee of fifty cents to the officer killing the dog. The owner or keeper of the dog so killed shall, in addition to the costs, be liable to the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry or to the county commission for the value of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses or colts or poultry so killed or injured.

or transformation of garbage 2 : the power or authority to destroy  
pose of (the car was at my ~) 3 [garbage disposal unit]: a device  
used to reduce waste matter (as by grinding)  
**'dis-*pose*** \dis-'pōz\ *vb* **dis-*posed***; **dis-*pos-*ing**** [ME *disposen*, fr.  
MF *disposer*, fr. L *disponere* to arrange (perf. indic. *disposui*), fr. *dis-*  
+ *ponere* to put — more at POSITION] *vt* 1 : to give a tendency to  
: INCLINE <faulty diet ~s one to sickness> 2 **a** : to put in place  
: set in readiness : ARRANGE <*disposing* troops for withdrawal> **b**  
*obs* : to come to terms *syn* see INCLINE — **dis-*poser*** *n* — **dis-**  
**pose of** 1 : to place, distribute, or arrange esp. in an orderly way  
2 **a** : to transfer to the control of another <*disposing* of his personal  
property> **b** (1) : to get rid of <waste that is hard to *dispose of*> (2)  
: to deal with conclusively <*disposed of* the matter efficiently>

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

VS.

CRIMINAL ACTION NO. 07-P-CR-09(R)

CHARLOTTE ELZA

ORDER DENYING MOTION FOR RECONSIDERATION

This matter came back before the Court the 25th day of September, 2007, for hearing upon Defendant's Motion for Reconsideration of its May 23, 2007, Order Denying Defendant's Motion for Good Cause to appeal the jury verdict of guilty returned July 20, 2006.

The parties, by stipulation, extended the time for the filing of a Memorandum in Support of Defendant's Motion to November 14, 2007, with leave given to the State to file its Response to the Memorandum on or before December 10, 2007.

The essence of Defendant's argument now is that the electronic record of the Magistrate Court jury trial is defective, and, as a consequence, no meaningful review of the Magistrate Court proceedings can be conducted. The State did not respond.

Upon consideration thereof, the Court remains of the opinion that the defendant has failed to show any cause, certainly no good cause, why the Notice of Intent to Appeal was not filed before the September 18, 2006, deadline. Any complications with respect to the Magistrate Court jury trial record have no bearing on the requirement that Defendant show good cause why the appeal was not timely filed.

It is, therefore, the JUDGMENT and ORDER of the Court that Defendant's Motion for Reconsideration be DENIED, her Motion for Good Cause is DENIED, and her Petition for Appeal

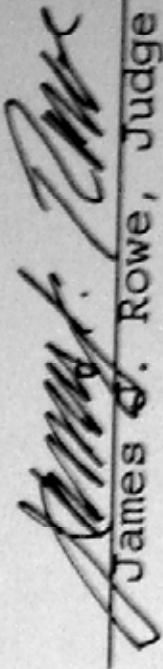


is REFUSED. The matter is hereby REMANDED to the Magistrate Court for imposition of sentence.

The Clerk is hereby ORDERED to forward a copy of this Order to the Magistrate Court Clerk, Defendant's counsel of record, and to the Pocahontas County Prosecuting Attorney.

Entered this 17th day of June, 2008.



  
James D. Rowe, Judge

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

v.

Case No. 07-P-CR-09  
Judge Rowe

CHARLOTTE ELZA,  
Defendant.

**ORDER DENYING MOTION FOR GOOD CAUSE**

Defendant, by counsel, filed a Motion for Good Cause with this Court on January 8, 2007. Pursuant to Rule 20.1(c) of the West Virginia Rules of Criminal Procedure in Magistrate Court ("Magistrate Court Rules"), the Motion alleges that good cause exists for this Court to grant an appeal beyond the Twenty-day time limit set forth in Magistrate Court Rule 20.1(a).

As discussed below, this Court finds that Defendant has failed to show good cause why the appeal was not filed within the 20-day period, and denies the Motion.

**Applicable Law**

"Within 20 days *after a verdict* or a finding of guilty, the defendant may file a motion requesting that the judgment be set aside and a new trial held." Magistrate Court Rule 20(a)(emphasis added). "Time periods for filing a motion to set aside judgment shall not be extended." Magistrate Court Rule 26(c).

"[A]ny person convicted of a misdemeanor in a magistrate court may appeal such conviction to the circuit court as a matter of right." Magistrate Court Rule 20.1(a). "Notice of appeal shall be filed in magistrate court within 20 days *after the sentencing* for such conviction or within 20 days after the magistrate has denied a motion for a new trial." *Id.* (emphasis added). If no appeal is perfected within the appropriate 20-day period, not later than 90 days *after the*

POCAHONTAS COUNTY CIRCUIT COURT

RECEIVED 5-24-07

*date of sentencing*, the circuit court may grant an appeal upon a showing of good cause why such appeal was not filed within the 20-day period. Magistrate Court Rule 20.1(c)(emphasis added).

### **Factual and Procedural History**

Defendant was convicted by jury verdict in Magistrate Court on July 20, 2006 of harboring a dog that she knew or had reason to believe had worried, chased or killed livestock, in violation of West Virginia Code § 19-20-17. On August 29, 2006, Defendant appeared and was sentenced to confinement for thirty days and ordered to pay restitution for the value of the livestock that the dog had killed. Defendant filed a Motion for a New Trial and Change of Venue on September 18, 2006. This Motion was apparently denied on October 12, 2006.<sup>1</sup> In mid-October, 2006, Defendant's counsel could no longer represent Defendant due to personal and professional issues of the attorney. Defendant retained the present defense counsel on October 21, 2006. Counsel requested the case file on October 23, 2006, and it was mailed the next day. But, due to unknown problems at the post office, present counsel did not receive the case file until November 6, 2006. On or about October 25, 2006, Defendant filed a Motion for Reconsideration or Reduction of Sentence. On November 8, 2006, Defendant filed a Notice of Intent to Appeal and Petition for Appeal or in the Alternative New Trial. A hearing was set for December 20, 2006, where both parties appeared and made arguments. At the hearing, the Magistrate stated that she had no jurisdiction and the Circuit Court would have to hear arguments. Defendant then filed the present Motion for Good Cause on January 11, 2007.

### **Analysis**

Magistrate Court Rule 20 requires a motion for a new trial to be filed within 20 days after the verdict. Rule 26 expressly prohibits any extension of this time limit. In the present case the

<sup>1</sup> There is no Order denying the Motion, but there is a handwritten note on the Motion indicating that it was denied on October 12, 2006.



jury returned the guilty verdict on July 20, 2006. Thus, Defendant had until August 9, 2006 to file a motion for a new trial and this date cannot be extended. Defendant did not file her Motion for a New Trial until September 18, 2006 and then again on November 8, 2006. Neither was timely filed, so neither is relevant to this appeal.

Magistrate Court Rule 20.1(a) requires notice of intent to appeal to be filed within 20 days after sentencing or within 20 days after a motion for a new trial is denied. Defendant was sentenced on August 29, 2006. As stated, Defendant did not file a timely motion for a new trial. Thus, Defendant had until September 18, 2006 to file a notice of intent to appeal. Defendant did not file such notice until November 8, 2006.

Magistrate Court Rule 20.1(c) allows the Circuit Court to grant an appeal if notice is filed within 90 days after sentencing upon a showing of good cause why the appeal was not filed within the 20-day time limit. Thus, Defendant had until November 27, 2006 to file a notice of intent to appeal, which she did file on November 8, but she must show good cause why it was not filed by September 18, 2006. In the present Motion for Good Cause, Defendant's counsel explains complications that arose in mid to late October when prior counsel withdrew from the case and an error at the post office delayed the delivery of the case file until November 6, 2006. Defendant's counsel cites this as good cause to allow the appeal, stating: "The Defendant should not be punished because of her former counsel's withdrawal from this case and the problems at the U.S. Postal Service." This argument misses the issue. Defendant must show good cause why the notice of intent to appeal was not filed before the September 18, 2006 deadline. Any complications that arose in mid to late October are irrelevant to show good cause why the appeal was not filed before September 18. Therefore, Defendant has failed to show good cause why the appeal was not filed within the 20-day time limit.

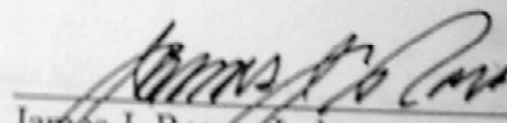
Though not expressly raised on appeal, this Court also notes that the Magistrate was correct in stating that she had no jurisdiction to consider Defendant's Notice of Intent to Appeal and Petition for Appeal or in the Alternative New Trial at the December 20, 2006 hearing. The Motion for New Trial was not timely filed and the Rules require the Circuit Court to determine if good cause exists for allowing an appeal after the 20-day time limit.

### **Decision**

Based upon the entire record and an examination of applicable law, this Court **FINDS** that the Notice of Intent to Appeal was not timely filed and that Defendant has failed to demonstrate good cause to extend the filing period beyond the 20-day time limit prescribed by the statutes and rules above. Accordingly, this Court hereby **DENIES** the Motion for Good Cause and **REFUSES** the Petition for Appeal.

The Clerk of this Court is hereby **ORDERED** to forward a copy of this Order to Defendant's counsel of record and to the Pocahontas County Prosecuting Attorney's office at their respective addresses of record.

Entered this 23rd day of May, 2007

  
James J. Rowe, Judge  
Eleventh Judicial Circuit

Estimate prepared for Jeff Taylor for sheep killed by dogs on spring 2004

8 Mature Breeding Ewes valued at \$225.00 = \$1800.00

15 Slaughter Lambs valued at \$110.00 = \$1650.00

4 Mature Ewes Fatally Injured valued at \$175.00 = \$ 700.00

**\$ 4150.00**

Estimate prepared by:

*Fane Irvine II*

Fane Irvine II  
Extension Agent (Pocahontas County)

900 E. Tenth Ave

Marlinton, WV 24954

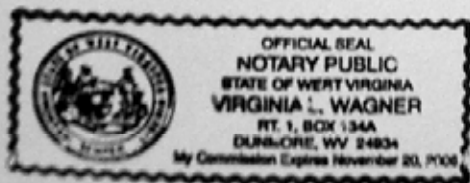
(304) 799-4852

(304) 799- 6272 fax

STATE OF WEST VIRGINIA  
COUNTY OF POCAHONTAS

The foregoing instrument was acknowledged before me this  
18th day of August, 2006, by FANE IRVINE, II.

My commission expires: November 20, 2006.



*Virginia L. Wagner*  
NOTARY PUBLIC



Dear Mrs. Mooney,

Here is a copy of my bank statement from January 2004. As you can see I purchased gas on the 22<sup>nd</sup>, and checked into a hotel on the 23<sup>rd</sup> of January. The check out date is on the 24<sup>th</sup> that is the date that they processed the card on. As I am sure you are aware that hotels process your card on the date of check out. Please, relay this to the wonderful, and not to mention knowledgeable seat holders of Pocahontas County. One thing that you may be able to do is summons the video from the hotel, this way they can clearly see the dog on the 23<sup>rd</sup> being completely out of the state of West Virginia. I guess that he could be mistaken for a sheep, or maybe a deer. I would just like to say thank you so much for taking this case on. I know this is not the best county or even state to practice law in. At least there are people like yourself who stand up for what is right and that I commend you on. Have a wonderful weekend and if you should need anything you may reach me at (H #407-905-9968), (Cel# 407-758-7170).

Sincerely,

Janet Bradshaw

IN THE MAGISTRATE COURT  
OF POCAHONTAS COUNTY, WEST VIRGINIA

TONY TATANO,

Plaintiff,

v. CASE NUMBER: 04-M-545

AFFIDAVIT  
DECLARATION

CHARLOTTE ELZA,

Defendant.

AFFIDAVIT DECLARATION OF RAY SHARP

I, RAY SHARP, being first duly sworn, do depose and say:

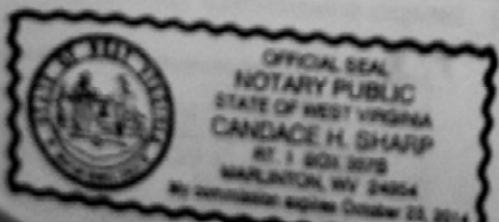
1. I affirm that I am a Citizen and resident of Pocahontas County, and reside in Marlinton, West Virginia.
2. I affirm that I was called to be a witness in the above-styled legal matter on 20 July 2006, but was never called into the courtroom to testify.
3. I also affirm that while I was waiting in the witness room to testify that Corey Bradshaw, 13 years of age, came into the room very upset and stated that he was afraid when he saw Maxie Gum hitting his fists together while Charlotte Elza, Corey's grandmother, was on the witness stand, as well as the obscene gestures being made to her by persons in the audience holding up their middle finger to Charlotte.
4. And I further state that while waiting in the witness room to be called into court I could hear the talking and laughing and general noise of the courtroom even with the doors of the courtroom shut.

And further the Affiant saith not.

Ray Sharp  
Ray Sharp  
Marlinton, West Virginia 24954

Taken, subscribed and sworn to before me this the 31st day of July, 2006.

My Commission expires 10/23/2014



Candace H. Sharp  
NOTARY PUBLIC

IN THE MAGISTRATE COURT

OF POCAHONTAS COUNTY, WEST VIRGINIA

TONY TATANO

Plaintiff,

AFFIDAVIT  
DECLARATION

V.-Case Number 04-M-545

CHARLOTTE ELZA,

Defendant.

AFFIDAVIT DECLARATION OF JANET BRADSHAW

I, JANET BRADSHAW, being first duly sworn, do depose and say:

1. I affirm that I am a Citizen and resident of Orange County, Florida and reside in Oakland Fl.
2. I affirm that I was called to be a witness in the above-styled legal matter on 20 July 2006.
3. I further declare that I found it very hard to testify due to the disruptive and restive atmosphere taking place in the courtroom whereby members in the audience were freely talking.
4. I also affirm that while I was waiting in the witness room to testify that Cory Bradshaw, 13 years of age, came into the room very upset and stated that he was afraid when he saw Maxie Gum hitting his fists together while Charlotte Elza, Cory's grandmother, was on the witness stand, as well as the obscene gestures being made to her by persons in the audience holding up their middle finger to Charlotte.
5. And I further state that while waiting in the witness room to be called into court I could hear them talking and laughing and general noise of the courtroom even with the doors of the courtroom shut.



February 23, 2004  
340 Largovista Dr.  
Oakland, Fl 34787

Pocahontas County Courts  
900-D Tenth Avenue  
Marlinton, West Virginia 24954

To whom it may concern,

I, Janet Bradshaw, owner of one Registered Boxer and one mixed Sharpie/ Chow, does swear that this is the truth and so do by God and my Notarized signature. I heard from my mother, Charlotte Elza, on January 18, 2004, that my boxer was shot and killed by Jeffrey Taylor. She also stated to me that she had received an Order from Ms. Sandy Mallow, Pocahontas Co. Humane Officer, to put to death both my dogs within 48 hours. This order was dated on January 16, 2004. I realized that Mr. Taylor had stated he felt it might be my dogs in his sheep on Sunday, January 18, 2004, that my dogs were unjustly judged. I requested my mother to use any or all local agencies to obtain the body of my boxer from Mr. and Mrs. Taylor. The body was to be taken to Blacksburg Virginia, Veterinary School of Medicine, for testing of sheep blood, parasites, sheep infestation germs and wood. I also needed someone independent to this matter to see and take pictures of any or all sheep that were supposedly killed on February 18, 2004, for me.

I also arranged for a friend Mr. Via, from Clover Lick to go with my mother to the residence of Mr. and Mrs. Taylor obtain the body of the dog, to see the sheep and take pictures on or about January 20, 2004. Mr. Via did go to the residence and explained to Mrs. Taylor my request. She told him he could not see the dog or the sheep and to not come back on their property. I had my mother call Ms. Mallow to request her help to obtain the above duties for me. She stated to me that, Ms. Mallow wouldn't get involved and had not see the dead boxer. Mom had already gone to the Sheriffs Dept. to see if she could get a deputy to go with her and talked to the State Police, to Mr. Weiford, to both Magistrates, Ms. Beverage and Mr. Hevener and the County Commission. with no help from any of these people to get the body of my dog or to see the supposedly dead sheep. The testing could have proven the guilt or innocence of my boxer. I know an independent and honest party should have been given the right to see and evaluate the value of the supposedly dead sheep for me. My mother had stated to Mr. Taylor on the 18<sup>th</sup> of January, if my dogs were proven to be the cause of the death of any sheep: I would have them appraised and pay for his sheep. I did come to my mothers residence and picked up my mixed dog, Zeek and took him and a stool sample taken on January 19<sup>th</sup> and 20<sup>th</sup>, 2004, to a visionary clinic for testing. The enclosed test from the visionary clinic was negative of all sheep parasites. This is a

licensed, Certified Visionary Clinic in the State Of Florida. The test is true and valid that my dog, Zeek, had not bitten into any sheep.

When and if anyone can prove that my dog did kill a sheep, I will see that he is humanely put to sleep.

Thank you for your concerns in this matter.

MASTER PROBLEM LIST

Sincerely yours,

*Janet Bradshaw*

Janet Bradshaw

State Of Florida

County Of Orange

This 24 day of Feb, 2004, I hereby certify that this statement is true and correct to the best of my knowledge.

Janet Bradshaw

FCOL  
KTC

State of Florida

County of Orange

On this 24 day of Feb, 2004, before me personally appeared Janet Bradshaw and signed the above statement.

Kay T Coomer  
NOTARY PUBLIC FOR THE STATE OF FLORIDA



Kay T Coomer  
My Commission D0036300  
Expires June 26, 2006

**PULASKI COUNTY CLERK**

Mr. K. Friel, Chief Deputy  
Miss J. Totten, Deputy  
Miss G. Workman, Deputy

Timmy L. Broce, Deputy  
Doreen Sue Helton, Deputy

**PATRICIA D. DUNBRACK, CLERK**  
900-C TENTH AVENUE  
MARLINTON, WV 24954  
(304)799-6063 or 4549  
Facsimile (304)799-6947

September 30, 2004

**WHOM IT MAY CONCERN:**

Please be advised that, to my knowledge, there has not been an appraisal report filed by Kyle Hause, Carol Rose and Mr. [redacted] in regard to the sheep alleged to have been killed by the [redacted] of Charlotte Elza.

*Patricia D. Dunbrack*  
PATRICIA D. DUNBRACK



WYOMING COUNTY CLERK

Mr. K. Friel, Chief Deputy  
Mrs. J. Totten, Deputy  
Mr. G. Workman, Deputy

Tammy L. Broce, Deputy  
Doreen Sue Helton, Deputy

PATRICIA D. DUNBRACK, CLERK  
900-C TENTH AVENUE  
MARLINTON, WV 24954  
(304)799-6063 or 4549  
Facsimile (304)799-6947

September 30, 2004

WHOM IT MAY CONCERN:

Please be advised that, to my knowledge, there has not been an appraisal report filed by Kyle Hause, Carol Rose and Mr. [redacted] in regard to the sheep alleged to have been killed by the [redacted] of Charlotte Elza.

*Patricia D. Dunbrack*  
PATRICIA D. DUNBRACK

**IN THE MAGISTRATE COURT  
OF POCAHONTAS COUNTY, WEST VIRGINIA**

**STATE OF WEST VIRGINIA,  
TONY TATANO**

**Plaintiff,**

**v. CASE NUMBER: 04—545**

**AFFIDAVIT  
DECLARATION**

**CHARLOTTE ELZA,**

**Defendant.**

---

**AFFIDAVIT DECLARATION OF CHARLOTTE ELZA**

**I, CHARLOTTE ELZA, being first duly sworn, do depose and say:**

1. I affirm that I am a Citizen and resident of Pocahontas County, West Virginia, and reside in Green Bank, West Virginia.
2. I affirm that I was called to be a witness, as the Defendant, in the above-styled legal matter on July 20, 2006.
3. I further declare that I found it very hard to testify due to the disruptive and restive atmosphere taking place in the courtroom whereby members in the audience were freely talking, laughing, mimicking myself and my attorney while I was on the witness stand.
4. I affirm that certain persons such as Rhonda Taylor, her daughter, Kindra Taylor and Elke Taylor were making facial distractions at me such as sticking out their tongue, placing their thumb to their nose and ears and waving their fingers, making obscene hand gestures such as holding up their middle finger at me; and Maxie Gum raising an upward fist and snarling his mouth, while hitting both fist together, and raising his hand to his throat as if choking

himself, and other such hand and facial distractions all while I tried to testify.

5. I declare that while sitting in the courtroom throughout the proceedings, I saw the same gestures that were made to me also being made by the same persons towards other witnesses as well when they were called to the witness stand.

6. I also affirm that I witnessed the assistant prosecutor mimicking my defense attorney several times. He would turn to the audience in the back of the courtroom and mimic my attorney and laugh This was accomplished while the defense attorney had her back to him.

7. I affirm that I heard my defense attorney request the magistrate to order a more orderly and quite courtroom and that the magistrate simply told her to Continue without directing the audience to do anything.

8. I state that I heard the term, 'crazy ole women', repeated very loud on more than one occasion throughout the proceedings.

9. And I also affirm that it was difficult and at times impossible to hear what was said between my attorney and witnesses given testimonies. It was easy to see that Mrs. Mooney was upset and distraught and approached the bench on several occasions, waver from her questions from the witnesses. I feel **THE HATE CRIMES**, that were performed openly in the courtroom were another break down of law and justice in POCAHONTAS COUNTY.

And further the Affiant said not.

*Charlotte W. Elza*  
Charlotte W. Elza  
Rt. 1 Box 59B  
Green Bank, West Virginia 24944

Taken, subscribed and sworn to before me this 31st day of August,  
2006.

My Commission expires May 31 2012



25 August 2004

## OUTLINE OF DEFENSE FOR CHARLOTTE ELZA CASE:

(dog v. sheep)

Charlotte says some of her witnesses now fear coming to court! But I think the strength of her case lies below:

- 1> Motion to Exhume dog & verify dead sheep ignored in Magistrate Court;
- 2> Motion to Exhume dog & verify dead sheep ignored in Circuit Court when filed by Charlotte;
- 3> Motion to Rule on Motion to Exhume ignored in Circuit Court when filed by Charlotte;
- 4> Motion to Rule still not considered as of this date by Circuit Court (Court Clerk Butch Michaels told Charlotte recently he thought judge would render a ruling this Friday at the hearing regarding these motions);
- 5> By not making a ruling or by denying the motions would render a 'mistrial' by denying 'due process' & 'equal protection under the law' and subject this whole matter for appeal – since there is a LACK OF EVIDENCE by which to find any cause of action against Charlotte;
- 6> Reason to Exhume is to retrieve the dog collar with the metal tags to show just who owned the dog allegedly killed;
- 7> Reason for physical proof of dead sheep is to show justiciable cause for claims;
- 8> Pursuant to WV Code 19-20-15 'assessment of damages' requires verification of EACH SHEEP & EACH INCIDENT, not the summary claim over alleged dead sheep strung out over a nine month period as this current claim – and the 'appraisers' must be 'go upon the ground' to make any sort of justifiable 'investigation', not just on heresay by the owners – and in such a case, the owners are responsible for 'all the costs and expenses of the proceeding';
- 9> The sheep in this case are NOT registered, yet 8 sheep divided into \$5000 would make each sheep cost \$625, a ludicrous amount pursuant to the TAX RECORDS filed with the County Assessor showing the value for each sheep as \$50 as per the owners signature!

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1. Double jeopardy Tried in Magistrate Court and appealed to Circuit Court.
2. 19-20-17 Misdemeanor See: front page Misdemeanor Information Count I Signed by Tony Tatano See: Summons to appear: Criminal Case
3. 19-20-18 Sandy Mallow (under oath) and after receiving satisfactory proof that this dog did the mischief, shall issue a warrant on application being made by the owner of the sheep,—etc. Killed: and give it into the hands of the Sheriff, who shall kill the dog forthwith or dispose of By other available methods. ( I went to Sheriff on Mon. Jan. 19 and on Tue. Jan 20. To seek Help and he stated he didn't have anything to do with dogs or sheep. That is why we have a Dog Warden. That week, I also went before the County Commission (SEE Pocahontas Times) (NO One) was responsible for the dog or sheep. I was hospitalized on Fri. Jan. 23, 2004 until Thursday, Jan. 29, 2004. A direct cause beating at my home on Sunday, Jan. 18, 2004.
4. 19-20-15 Three Assessments of damages (Appraisers
5. 19-20-15 All papers in connection with any claim shall be filed and preserved in the office of Clerk of the County Commission. (No papers anywhere) I still don't have copies of evidence Used against me.
6. No Case Number assigned or put on Summons to Appear: Criminal Case
7. Complaint signed by Tony Tatano—Misdemeanor Info. Vs Criminal Action No. )4-M \_\_\_\_\_
- 8 Because, I was so ill, and not the owner of the dog, when Janet came after her dog to take it to Florida, I was no longer responsible for the dog.



I had fixed my father's lunch and was cleaning the kitchen when my brothers came to my Father's home drinking. They visited for a while then got in a big argument with my Dad. I had left this home and came to mine, then returned to his home. This was because of a disturbance between my two bothers, Henry and Clayton Wolfe, Henry's wife Debbie. I had called 911 to send an officer to my father's residence. When I opened my front door, both dogs bolted out to urinate. I was in a hurry and didn't put them on their leash. I knew, The electric fence was off. Both dogs were on my property when I left to return to my father's home, next door to me.

When I left my home, I saw Jeff Taylor's black pick-up truck setting above my father home. He was standing out a side the truck, which was backed into a wide spot in the side of the road. He had been parking up there, of and on, for weeks. I had become afraid of him since last May 2003, when I caught him seeking around my home, in the dark, at 11:30 P.M.

I hadn't gotten my coat off when John and Denise arrived. I told them I had to go back home and leash the dogs. They assured me that both dogs were laying on my porch. While they were talking (two Minutes) my brother, Clayton was walking back in the front door of my Father's home. John immediately asks him if he wanted a ride home and left with Clayton.

Within 10 minutes or less, I saw Rhonda Taylor, Jeff Taylor's wife, pulling into my Dad's driveway. Which is approximately 100 yards from the main road. She knocked on the door. And when I answered, Jeff was parking his truck at my Dad's mail box. Their daughter, Courtney was parking in my Dad's driveway too. There was a small bluish car that parked to the right of my Dad's driveway. I was told that he was Courtney's boyfriend. Rhonda said, Charlotte, your dogs just killed our sheep. It looks like a blood bath. All of our sheep are dead. At this time, I saw Zeek, the dog in the road in front of my Dad's driveway. I walked past Rhonda and Courtney on the porch and down the steps. Jeff grabbed my arm and started telling me, bring your checkbook, get in your truck, you are going down to your house.

I pulled lose from him and started back to my Dads front gate. I ask, my daughter, Denise, Do you think I should go down to my house? She said, yes Mom, you go check the dogs. Rhonda said, we want hurt, your Mom. Courtney said, you might not but, I will. Jeff kept jerking on my arm and pulling me on the ice. He had moved his truck, while I was talking with his wife, and slid it up almost against the gate to the yard. My truck was parked on ice beside his truck. He kept pulling and pushing me to my truck, telling me Get your Checkbook And start writing out checks. I explained, we will go check the dogs. He pointed to the line fence between my Dad's property and his Dad's property and said, "Your damn boxer is laying up there dead. I just shot the son-of-a-bitch. He is laying right up there in the grass. Now get in your truck and I mean business. I got in my truck, realizing I hadn't taken my coat off when I went into my Dad's house. I still had the keys in my coat pocket. I drove to my

home.

I parked right along the road. Jeff pulled his truck into my yard, backing it into the shrubbery. Courtney parked in front of my truck and backed up almost against it. Rhonda parked right back

of my truck. I got out, as I walked to the front of my truck and into my front yard, Zeek, mixed breed, walked from behind the house, to the left front side and stopped. Courtney and Rhonda had walked to the front of Jeff's truck and were standing there with Jeff. I got Zeek by his collar and started rubbing my hand all over the front of him and showing my hands to them. I said, Jeff, I don't see any blood on this dog. I opened his mouth to check his teeth. We saw no wood or blood. I also checked his paws. I was standing across the dog and asks Jeff if he would come hold the dog, while I went into the house to get a white towel, to rub over the dog.

All the time I was checking the dog (all stayed about 20 feet from me and the dog). At this time, I stated, Jeff, you and Rhonda, Both knows if these dogs killed your sheep, Janet would want you to kill the dogs and she would pay for your sheep. I want to go see for myself. I want to see the dead sheep

I wanted him to hold the dog, Jeff walked within 5 feet from me and stated, You damn dumb son-of-a-bitch, don't you know, dogs don't get blood on them when they are killing sheep. He then walked across to the left side of my home and pointed toward Janet Ghigo's home. He said, that damn black dog was right up there too killing my sheep. I'm going up there and shooting that son-of-a- bitching dog and if those two son-of a bitched come out I'll shoot them too. Courtney and Rhonda remained standing in front of Jeff's pick-up truck while this was taking place. I let go of the dog as Jeff walked toward his family members. I said, are we going to see the sheep and I want to see Ollie. I don't believe anyone would be stupid enough to shoot a dog like him. Jeff said, I'm going to shoot all four of those damn dogs that were in my sheep. Pete's(my brother, Clayton) dog was right up there too. I'm going to kill them all. I said, Jeff until you prove to me my dogs killed your sheep, I'm not going to let you shoot my grandchildren's dogs. Jeff walked within 5 feet of me and stated, "you damn, dumb, son-of-a-bitch, don't you know, I would rather shoot you that your damn----- (dogs). I knew then, that Ollie wasn't shot and I was in danger. Then, I said, " now you all are threatening my life-Get off my property and stay off. Janet Ghigo drove by at this time and slowed down in front of my house.

I walked toward the road and pointed to the road. I didn't say anything, because Jeff was looking like he was going to kill me! He grabbed both my arms (above the elbows) and started shaking me back and forth so hard my chin was hitting my chest. He then kicked my right leg, with all this might. As my head went forward, I saw his work boots. He was about to kick me again. I put my left knee against my right knee to keep him from kicking me between the legs. When he kicked this time, he knocked my legs out from under me. I fell to the ground. He retched down and got a hold of the front of my coat and jerked me upward. When he did this, I jerked from his grasp. I went, as fast as, my two, what seemed like broken legs

would carry me, toward my front door. While I was going, I heard Rhonda scream, "Courtney, Don't hit her." I could hear someone coming up behind me, making small running fast steps. Just as I got to the top of the porch. Courtney hit me with both fists in the right shoulder. I went straight forward on the porch. My head bounced, my right rib hit and I couldn't breathe. I



heard all their vehicles leaving fast. I was laying on my porch in so much pain. I couldn't move. I was getting so cold my chin was sticking to the board. I couldn't raise my right arm, it felt like all my ribs were broke. I don't know how long it took to get air back into my lungs and finally thought to use my left arm to see if I could reach the door knob. I kept pulling myself and finally opened the door, as the dog jumped in first. I pulled myself inside and laying in the floor, raised up and locked the dead bolt lock. I was still in the floor when I heard a truck stop in the front of my house. I thought Jeff had gone for his gun and was going to shoot me. I heard someone, walking fast and then kicked my front door. Their shoe hit my door knob and inside a picture almost came off the wall, above my head. I then, heard the truck pull away. I finally was able to pull myself up on the couch and got the phone. I called 911 and could hardly talk. I ask them to send an officer to my home because Jeff and Courtney Taylor had just beat me up and left me laying on the porch. That someone had kicked my front door and I was afraid they might kill me and my neighbors, Janet and Frank Ghigo, she said, she would send an officer right out. John Burns had returned as I was dialing 911. He had no idea what was wrong. He listened to my phone calls. As soon as, I got off the phone, I said, John, go check on Dad and Denise. I didn't know if they were hurt. He ran from the house. <sup>I heard 2 gunshot about 20 sec. apart (up road)</sup> In about ten minutes, John and Denise came to my house. When they showed up, Zeek came from the basement to my front door. He wanted out side. John started to open the door and I told him to keep the dog indoors. Denise checked Zeek over and said she didn't see anything on him. They wanted to take me to the hospital or call an ambulance. I got several zip-locked sandwich bags and put ice on myself. I was waiting for the officer and took a 800mg. Ibuprofen for pain.

My brother, Lee came by right after they left and stayed with me. It had started snowing. After 6 o'clock, he said, you better go to the hospital and get some ex-rays. My knee was swollen twice its size and my neck had a knot coming on the right side. He said, it was obvious the law wasn't going to come. I had call them several time and the State Police. The State Police were not answering the phone in Marlinton and I called Elkins. Lee and I finally gave up waiting for the law to show up and went to Pocahontas Memorial Hospital.

I went to the back of the hospital and went through the emergency room. The doctor called the law because he has to report battered cases. At about 7:00 P.M. Officer C. Doss and Trooper Pendleton came to my room. He handed me a notice from Sandy Mallow, Pocahontas Co. Humane Officer. This was an order to destroy the dogs, within 48 hours. I noticed the date, January 16, 2004, and stated, I had better leave the emergency room and get the dogs shot because my time is up. I wonder how Sandy knew Friday that Jeff and Rhonda were going to accuse the dogs of killing sheep this afternoon. Deputy Doss started taking my statement. Then, he also talked to John and Denise. Then Doss and Pendleton left the room. A male nurse came to take me to get an ex-ray. While I was on my way down the hall Sheriff Alkaire stopped us. He ask me how I felt and if I had given a statement. Then I was wheeled into the ex-ray room. After being x-rayed, the doctor came in to see me. He felt my neck and looked at my leg. He didn't feel anything was broken and wanted to write me a prescription



*for muscle relaxers and pain medication. I explained, I have had 3 1/2 vertebrae removed from my bombard area, a heart attach, with a heart cauterization to correct the mitral valve and a brain tumor removed. I had medication at home—he instructed me to see my personal physician in a few days and discharged me home. I phoned my daughter, Janet, in FL and explained what happened. She said, if they had killed Ollie, to get his body and have someone take him to Va Tec. for an autopsy. She wanted to know if any emzines for any sheep was in his mouth or stomach. Also, is there was any wool, blood etc. from a sheep on the dog. She told me (absolutely do not let Zeek out of the basement. I will clean up any mess and save it for a Veterinary Lab test on stool and to keep the dog as he was. I will leave and be up there, as soon as, I can get there.)*

Jeff drove by my home twice that night, so slow that a small child could have passed his vehicle. He would go right below my home and turn in Janet and Frank Ghigo's driveway. I do not know if he made more trips past my home, those were the time I saw him that night. The next morning, around 6:00 A.M., he was in front of my house racing his engine and beating on the door of his truck. He stayed out there for about four minutes and pulled off.

Faye, Steve and their two children, Crystal and Steven, have been friends and neighbors for years. We visited each other and called a couple of times per week. Since, my hearing before Magistrate Hevener, on March 3, 2004 and a few days after that hearing; they haven't spoken with me. Only when my Dad passed away on April 25, 2004, did they even acknowledge knowing me. Faye played the piano and sang at my father's funeral. I stopped in front of their home a few days after the funeral. Faye, Steven and Steven's wife, Ashley were weed-eating and running the lawn mower. I stopped to thank Faye and to tell her I enjoyed her hymns. We all talked for about 45 minutes and I left.

However, back in January we were talking almost daily, both visiting and on the phone. On Friday evening, January 16, 2004, about 5:00PM. Faye called me. She talked for a few minutes and up-dated me on her daughter's, Crystal, pregnancy. Then she said, Charlotte, I want you to put both dogs in the basement this weekend and leave them in the house. I want you to lock your doors and not go out-of-doors. I have this feeling that Jeff is going to cause you trouble, so please, please stay locked in the house. She jokingly informed me that Jeff and Rhonda had a (blue ribbon sheep) to die that week in the driveway, near the front of the house. I told her, that sheep has been laying up there for two days with its feet straight up in the air. My dogs have been tied up for months and I only untie Zeek sometimes when I go up to my Dad's home and he rides up in the truck. Zeek stayed on the front porch on an old big chair. I ask her what was going on that she called to tell me such a strange story. She said, it is just a feeling I have

I immediately called Marie Fultz, my sister in Marlinton, and relayed the story. Marie's advice was to do as she said or take the dogs and leave the house. Marie said, go over everything she said to you and try to remember how she sounded when she talked. I said she sounded scared. Marie said, she knows more than she is telling you.

I did keep the dogs in the basement the two days. I only let them out to urinate and then put them back in the house. I went straight to my truck and up to my Dad's house. I kept the doors locked and my curtains pulled shut.

On Sunday morning, Jan. 18, I went up to check on my Dad about 1:45. We visited for awhile and I checked to see if he had taken his medicals. I started preparing food for him, when my two brother, Henry and Clayton, and Henry's wife Debbie stopped to visit. They were all drinking heavily. They talked with our father for awhile, Debbie was sitting at the kitchen table. She started reading my Dad's mail. He told her to leave his mail alone and to mind her own business. This made her angry and she started an argument with him. This was also taken up, first with Clayton, then Henry. Henry came into the kitchen and grabbed Dad by his shirt. I turned off the stove and left the house to call 911. I told them, so I left the house, I was calling the law to have them put out of the house.

to my house and as I opened the front door, both dogs jumped out and ran across  
had to urinate. I hurried up to call 911 and ask if they would send someone up  
my Dad's house because of the argument. As I was talking on the phone, I hadn't  
closed the door, I heard a truck engine. I walked to the front door and saw my brother's  
white truck leaving. I thought there was only two people in the truck. I rushed out  
the front door and drove back to my Dad's house. Debbie was passed out on the couch.  
My Dad was in the kitchen. He was upset. I went to the living room and helped Debbie  
to a chair. Went to the kitchen and helped my Dad to the couch. Debbie had wakened  
up and started arguing with my Dad. I told her to get her ass to the road and leave him  
alone. She got up and couldn't find her toboggan. Took one look at me and started out  
the front door. She was walking toward the road when I went to the kitchen to heat  
water for a cup of coffee. I turned around to see where she was and saw my daughter,  
Denise and her husband, John, coming in the drive way. I hadn't taken off my coat.  
As they were coming in the door, I saw Henry's truck in the front of the house. Clayton  
was getting out. I ask them if they wanted a cup of coffee and started to fix it as Clayton  
came in the front door. Denise ask me where I was going because I had my coat on and I said,  
I didn't have the dogs in the basement and was going back down to put them in. They both  
assured me that both dogs were laying at the front door when they came by my house.  
I was able to let John and Denise know they were all drunk as Clayton came in. John said,  
"Pete" do you want me to drive you home. He said, yes and they walked out the door.

When I let my house after calling 911, I had noticed Jeff's truck setting above my Dad's  
house, at a wide section along the road. Jeff was standing out side the truck, to the front,  
with one foot up against it. I didn't give him a thought, because I was concerned about  
my Dad. I didn't even think about the dogs been out or what Faye had warned me about  
Friday evening. I was only thinking about my Dad.

I watched John and Clayton "Pete" drive out the driveway and noticed that Henry was  
pulling of with Debbie over at the road. I walked back to the kitchen and was asking  
her how everyone had been when I saw Rhonda Taylor's vehicle coming in my Dad's  
drive. Right behind her car came her daughter, Courtney. Rhonda ran to the house and  
pounded on the front door. I opened the door with Denise and my Dad right behind me.  
Rhonda said, Charlotte, your damn dogs just killed our sheep. You should see all the dead  
sheep. She kept saying there were dead sheep everywhere. I walked past her, out on the  
porch. Denise and my Dad came out the door and was standing to the left of me on the porch.  
Jeff had parked over at the road. He was walking down the drive. He yelled at me, Charlotte  
where are your God damn dogs. He yelled over, who is that standing on the porch. Denise said,  
it is me, Denise. He turned around and I thought he was leaving. I saw Zeek, the mixed dog  
standing in the road right above the mail box and he started walking down the road to my house.  
I thought Zeek was there because Debbie had just left from where he was standing. I walked  
past Courtney and Rhonda, both standing on the porch. Jeff had started his pick-up engine  
and came flying down my Dad's drive way which was a solid sheet of ice. He slammed  
on his brakes on the bridge and slid up blocking the front gate. I had to turn side ways  
to get out. He jumped out of the truck and started yelling. Get your damn check book  
and start writing out checks. Your damn — dogs just killed my sheep. I said, my



over in the road walking back home. Jeff, if these dogs did kill your sheep, Janet and I will pay for them. I want to see the sheep and we will go check the dogs. Jeff grabbed by elbow and started pulling and pushing me toward my truck. He said, get the hell in your truck I'm getting your money. I jerked away from Jeff and slipped on the ice. I took a couple of steps before he grabbed me again. At this time, I said, Denise, do you think I should go down there. Jeff said, I'm not going to hit her.. Courtney yelled, no you might not but I will. Denise answered, yes, Mom go and check the dogs. Jeff yelled, your damn -\_\_-boxer is laying right up there and pointed. Right up there in the grass. I told you, I was going to get your damn boxer. That damn ---- Boxer is laying right up there. I got dead sheep laying everywhere. Now bring your checkbook. Now get in your GOD--- truck and get the hell down to your house. My thoughts were: if I leave here, I get hurt, but my daughter and dad would be safe. As I was walking to the front of the truck, I heard Courtney scream, You old dirty son-of-a- bitch get in the house. My Dad was hard of hearing: He said, you're a pretty young lady. Whose daughter are you? This made her even madder. She had her hands in fist form and was moving her arms up and down, as she stomped her foot. Courtney was yelling at both Denise and my Dad to get in the shut-up and get in the house. I saw Denise point and couldn't tell what she was saying. I realized that, I hadn't taken my coat of and had my keys in my coat pocket.

He had slid his truck so close to mine I was afraid to move. He backed out of the drive way and past my Dad's mail box. I backed out past Rhonda's vehicle and out to the road, in front of Jeff's truck. I noticed a small bluish-reddish car parked at the road. I drove down the road and pulled in while Jeff was backing his truck (right back against my shrubbery). Courtney drove past me and backed her car up right in front of my truck. Rhonda pulled up right behind my truck. I got out and walked to the front of the truck and to the left front side (facing the house) of the house, as Zeek came from the back side of my house. He stayed close to the side of the house because of the electric fence and stopped back of an old piece of drift wood I have in front of my house. I walked over and got hold of his collar. Jeff had gotten out of his truck and walked to the front of the truck, beside of Rhonda and Courtney. I squatted down and started rubbing Zeek with my hands. I would then show my hand to them. I would say, I don't see any blood on Zeek. I stood up and startled Zeeks and held his neck between my knees. I opened his mouth and looked for wool. I said, Jeff, I don't see any wool or blood on Zeek. If you will come and hold him I will go and get some paper towels. He said, you damn dumb son of a bitch, don't you know a dog doesn't get blood on them when they kill a sheep. They all remained about 25 ft. from me right in the front of Jeff's truck. Then, Jeff walked across the front of my house and pointed up to Janet's and Frank's house. He said, that damn black dog was right up there too, killing my sheep.

I'm going up there and killing that son-of-a bitched black dog and if those two son-of-a bitches come out I will shoot them too. All four of those damn dogs were up there in my sheep. I ask, who did the other dog belong to and he answered, Pete. I said to all, you all know if these dogs killed any sheep, we all would pay for the sheep and you could kill the dogs. " Jeff yelled, What is that on the back of him. I retch and got a large peace of dark brown wood chips and showed it to him and said that is wood from where he has been laying down back of the house. I said, you all see there is no blood or wool on Zeek. Now I want to go see the dead sheep. If

AND REAL ESTATE  
THE LAW PROVIDES  
A REPORT IN WRITING  
CALLED UPON BEING  
REVIEWED AND  
AFTER JULY 1,  
REFER TO THE  
COMPLETE EACH

TAYLOR JEFFREY A & RONDA  
RT 1 BX 58A  
DUNMORE WV 24934

DESCRIPTION	YEAR	OWNER'S VALUE	PURCHASE YEAR
<del> </del>			
<del> </del>			
<del> </del>			

PHONE ( ) \_\_\_\_\_

INFORMATION -----

OWNER'S	SCHEDULE 2	OWNER'S
VALUE	FARM ANIMALS	VALUE
57000	STOK FARM	
	<u>Cows</u>	<u>2560</u>
	<u>Bucks</u>	<u>160</u>



IN THE MAGISTRATE COURT  
OF POCAHONTAS COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

Plaintiff,

V. Case Number: 04—545

AFFIDAVIT  
DECLARATION

CHARLOTTE ELZA,

Defendant,

---

AFFIDAVIT DECLARATION OF CHARLOTTE ELZA

I, CHARLOTTE ELZA, being duly sworn, does depose and say the following:

1. I affirm as the Defendant in the above-named case, that on **January 21, 2004**, I proceeded within the forty-eight hours, after receiving notice, did dispose of the dog in question; with the permission of the Sheriff of Pocahontas County and before the Pocahontas County Commission. Sheriff Alkire gave me permission to transfer the dog to it's owner, Janet Bradshaw to be taken back to Orlando, Florida. See attached copy of THE POCAHONTAS TIMES ---Wednesday, January 21, 2004 County Commission Minutes by Mr. McNeill. WV Code 19-20-18 See Attached Code and Webster Definition of dispose.
2. I affirm that I did hear Jeffrey and Rhonda Taylor testify under oath; that the Boxer in this named case was killed on their property and taken to Jerry Taylor's property near Dunmore and buried on January 18, 2004. **Not one person other than Jeffrey and Rhonda Taylor has testified to see a dead dog. I then Affirm the dead dog in the picture is not the Boxer "Ollie". "Ollie" is alive and was living with David Moore in Marlinton.**
3. I also declare that Jamie Hubbert, a boyfriend of my niece, Johanna Fultz, and father of her son, Brad would state he had see the Boxer "Ollie" in Valley Head, then at McCoy's at Buckeye, in Marlinton near the Courthouse, and below Green Bank. In the summer of 2006, I received a phone call from Larry Turner. He wanted to know if he could have the Boxer, he proceeded to explain that he was living at Fran Manor; the Boxer was running loose and he had kept him for a couple of weeks. David Moore

IN THE MAGISTRATE COURT POCAHONTAS COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs

Magistrate No.:04M-0000545

CHARLOTTE ELZA,  
Defendant.

MOTION FOR REDUCTION OF SENTENCE

NOW COMES the Defendant Charlotte Elza by counsel Joan A. Mooney and petitions the court to reduce the sentence imposed by Magistrate Webb and granted her probation and/or alternative community service on these grounds for her petition the defendant states as follows:

1. This case arose due to a feud between neighbors who lived more than a mile apart and in which Jeff and Rhonda Taylor accused Charlotte Elza's daughter's dogs of killing a sheep. The Taylor's allegedly shot one of the dogs and when Ms. Elza learned of this, she immediately brought the other dog into her sister Marie's house in Marlinton, West Virginia and called her daughter to come and retrieve it. Charlotte went to the sheriff and asked him what she should do with the dog and he refused to get involved. She asked him if bringing the dog into town and sending it back to Florida was okay and he said fine and that is what she did. She has now been found guilty of harboring a dog who she believes has killed sheep, even though she had never seen any dead sheep on the property of the Taylor's except one old one who had died of natural causes.

2. Ms. Elza is sixty-one years old and is in poor health which could be exacerbated by time spend in a regional jail.

3. Ms. Elza has never before been trouble with the law and has been a good citizen and a neighbor during all previous times.

4. Since Ms. Elza does not have possession of the dogs, the alleged crime could not happen again.

5. That allowing Ms. Elza to stay on probation or perform community service in lieu of jail will allow her to gather the resources to pay the fine and restitution rather than try to maintain a household while she is not there.

THEREFORE, we respectfully request the sentence be reduced to probation and/or community service.

Respectfully Submitted,  
Charlotte Elza  
By counsel

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